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ABSTRACT

New York State currently has three charter school authorizing agencies. Until now, their oversight has focused on performance based, contractual, and regulatory accountability. An emerging literature suggests that authorizers are reluctant to actualize the accountability/autonomy exchange by closing schools for failure to meet performance targets. This qualitative study, however, suggests that the promise of performance based accountability is primed to be actualized in New York. Since the oldest charter schools in New York are 3 years old, 2 years remain before performance based accountability faces the 5-year renewal test. All three authorizers insist that schools' performance goals are defined and measurable. Several New York charter schools have already been closed for performance and fiscal reasons. The fact that New York has a highly developed performance based accountability system suggests that authorizers will take performance based accountability seriously. New York's charter schools are subject to contractual accountability. While charters serve an important planning function for prospective school founders, helping authorizers to identify both strengths and weaknesses in developing schools, contractual accountability, if inflexibly interpreted by authorizers, may lead to fear of making needed school changes and a "compliance mentality" by charter school practitioners. The study asserts that authorizers should use periodic site visits and detailed review of required records to ensure regulatory accountability. (Contains 31 references.) (SM)

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Charter School Accountability in New York

Findings from a Three-Year Study of Charter School Authorizers

Charter School Research Project

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MARCH 2003

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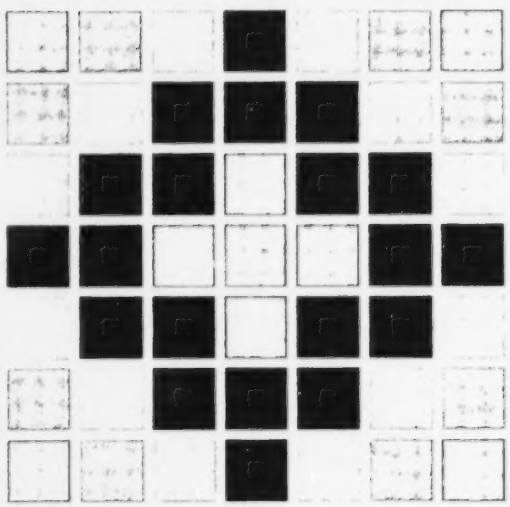

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EXECUTIVE SUMMARY

New York State currently has three charter school authorizing agencies: the New York State Board of Regents, the State University of New York, and the New York City Chancellor of Public Schools. Until now, these agencies have focused their oversight on three types of accountability: performance-based accountability, contractual accountability, and regulatory accountability.

An emerging literature suggests that authorizers are reluctant to actualize the accountability/autonomy exchange by closing schools for failure to meet their performance targets. Our study, by contrast, suggests that the promise of performance-based accountability is primed to be actualized in New York.

Since the oldest charter schools in New York State are three years old, two years remain before performance based accountability faces the five-year renewal test. However, all three authorizers have insisted that schools' performance goals are defined and measurable. Moreover, several charter schools in the state have already been closed for performance and fiscal reasons. Finally, the fact that New York State has a highly developed performance-based accountability system suggests that the authorizers will take performance-based accountability seriously.

In addition, New York's charter schools are subject to what we term contractual accountability. Charter school applications, which detail operational, instructional, programmatic, and performance promises made by the school, act as legal contracts between the authorizers and the schools, and compliance with the charter is monitored through site visits. Charter schools that wish to make "material changes" in their charters are expected to submit amendments. While charters serve an important planning function for prospective school founder, and assist the authorizers in identifying both strengths and potential problems in developing schools, contractual accountability, if inflexibly interpreted by the authorizers, may

lead to a fear of making needed school changes and a "compliance mentality" by charter school practitioners.

Finally, if contractual accountability expresses the business impulses of charter school reform, regulatory accountability emerges from the fact that charter schools are public schools, which must ensure the rights and protections of public school students. Authorizers use two main strategies to ensure regulatory accountability: periodic site visits, and detailed review of required records. While regulatory scrutiny is necessary to ensure that the public trust is being upheld by charter schools, it is important that regulatory accountability not compromise the autonomy promised by charter reform.

CHARTER SCHOOL ACCOUNTABILITY IN NEW YORK

"Every particular application of general law is an act of administration."
Woodrow Wilson[1]

INTRODUCTION

Across the country, charter school reform combines two strategies meant both to ensure the survival of strong schools and to eliminate schools with poor student achievement. First, school choice potentially enables families to choose schools with good student outcomes and leave schools with low achievement. Second, whether or not parents move their children out of troubled schools, those charter schools that fail to meet the student performance promised in their charters are supposed to be closed. It is the second strategy that is given teeth through the oversight responsibilities of charter school authorizing agencies, who are mandated to nullify or refuse renewal of the charters for schools that fail to meet their promised student achievement.

This report focuses on the three agencies given authorization and oversight functions by New York State's charter law, and is concerned with the second strategy. We are interested in how New York State's authorizing agencies have implemented their oversight responsibilities between December 1998, when the state's charter law was passed, and spring 2002. We ask the following questions:

[1] Cited in Harmon, M.M. & Mayer, R. *Organization Theory for Public Administration*. (Boston, MA: Little Brown, 1986), p. 36.

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- What oversight strategies have the three authorizing agencies employed over the past three and a half years in response to the accountability demands of charter school law and the realities of developing charter schools?

- How has charter school performance-based accountability been put into practice in New York, and particularly in New York City?

New York's charter law mandated two agencies with the right to authorize charter schools throughout the state: the State University of New York (SUNY) and the New York State Board of Regents.[2] In addition, the law enabled local districts to authorize charter schools within their jurisdictions; as of this writing, the New York City Chancellor of Public Schools has been the only district-level authorizer. By spring 2002, New York State's three charter school authorizing agencies had approved forty-eight charters. Of these, twenty-five were SUNY charter schools; fourteen were Regents charter schools; and nine were Chancellor charter schools. In addition to the Chancellor's nine charter schools, there were three Regents schools and twelve SUNY schools located in New York City.

In early 1999, with appropriated state funding, SUNY opened the Charter Schools Institute (CSI), a new independent nonprofit agency. Initially located in Albany, the state capital, and on the SUNY Purchase campus, CSI moved its Purchase office to New York City in 2001-2002. By then, the agency staff had grown to sixteen, including individuals with experience in charter school operations, the processes of other state authorizers, public schools, business and government.

As the administrative arm of the New York State Board of Regents, the State Education Department (SED) opened two small charter school offices in early 1999, one as part of its offices in Albany and another in its downstate (Brooklyn) division. As of spring 2002, the Albany charter school office had a staff of two professionals and two clerical workers, while the downstate office was staffed with one and a half professionals, a support person and a rotating group of interns. Both offices were staffed with

[2] Although the Board of Regents has final authority over all public schools in New York State, and all charter school applications must go to the Regents, the State University of New York was also given legislative authority to "resubmit" a charter returned by the Regents for reconsideration--an authority that SUNY has exercised in behalf of eight schools over the three-year period. Two charters schools, one on Long Island and another in Albany, are currently operating without Regents approval on the second submission.

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largely senior officials who had other responsibilities, and several continue to serve other functions. To assist these small staffs, experts are called in from other SED offices, such as special education and legal services.

The administrative arm of the New York City Chancellor of Public Schools is the Board of Education (in fall 2002, under Mayor Bloomberg, the name was changed to the Department of Education). A charter school office in the Board of Education opened in early 1999 with a staff of three, including a senior superintendent and an individual with alternate school experience. Rudolph Crew, then Chancellor, hoped to convert a number of New York City public schools to charter status; thus the charter school office was focused on the conversion process. The office increased to nine in 2000-2001 when Harold Levy became Chancellor, and staff members had backgrounds in state government and school administration. Finally, in 2001-2002, the charter school office decreased to five members, led by a Board of Education insider with fiscal expertise.

New York's charter school legislation has promised "to change from rule-based to performance-based accountability systems."

As in other states, New York's charter school legislation has promised "to change from rule-based to performance-based accountability systems"[3] –that is, in exchange for decreasing the regulations under which schools operate, these schools are to meet their student achievement promises, as indicated by scores on standardized tests mandated by the New York State Board of Regents for *all* public schools. Charters, issued to schools for five years, must describe the schools' student performance goals, and charter schools must "meet or exceed the student performance standards adopted by the Board of Regents for other public schools."[4] Charter schools may have their charters terminated prematurely if their student assessments fall "below the level that would allow the commissioner to revoke the registration of another public school, and student achievement on such measures [it] has not shown improvement over the preceding three years."[5]

As public schools all charter schools must uphold the public trust.

In addition, as public schools all charter schools must uphold the public trust: by not discriminating in their admissions and employment practices; by protecting the rights of disabled students and English language learners; by maintaining a healthy and safe environment; and by appropriately

[3] New York Charter Schools Act of 1998, Article 56 of the New York State Education Law, Section, 2850, 2f.

[4] Ibid, Section 2851, 2b.

[5] Ibid, Section 2855, 1a.

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spending tax dollars. Thus, both the authorizing agencies and the districts in which the charter schools are located are empowered to conduct a range of activities that we call regulatory accountability. "[To] ensure that the charter school is in compliance with all applicable laws, regulations and charter provisions,"[6] each authorizer is empowered by law to "visit, examine into and inspect any charter school, including the records of such school, under its oversight."[7] Although charter schools operate outside school districts, the districts in which charter schools are geographically located also have the right to "visit, examine into, and inspect" the schools to ensure that they are in compliance with all applicable laws, regulations, and charter provisions.[8] In other words, in the context of a "performance-based accountability system," charter schools in New York still operate under some of the regulatory accountability experienced by traditional public schools.

Finally, because charter schools are held to programmatic descriptions and other non-performance promises made in their charters, we view them as experiencing contractual accountability. While contractual accountability is relatively rare in traditional public schools, the mandated Redesign Plans by which New York's schools that remain low performing must create and then follow have something akin to contractual status.

In this report, we use accountability to include the terms–whether they are performance-based, regulatory, or contractual–to which public charter schools are held. We use the word oversight to mean those processes by which public agencies carry out their accountability functions.

Section I begins with a description of our method. Section II sets the stage with a brief description of charter school accountability. Section III analyzes the use of contractual accountability by New York's three authorizers. Section IV describes the authorizers' mechanisms for performance-based accountability. Section V presents the regulatory mechanisms used by the authorizers. Section VI summarizes the literature on charter school authorizers, compares our analyses with this body of research, and concludes with a discussion of the mixed modes of charter school accountability and its implications for the larger public education system.

[6] Ibid, Section 2853, 2.
[7] Ibid, Section 2853, 2.
[8] Ibid, Section 2853, 2a.

I. METHOD

This qualitative study was conducted from fall 1999 to spring 2002. In each of the three years, we conducted extensive interviews with the chief officers, as well as other staff, of each of the three active charter school authorizers in the state of New York: the Charter School Institute for the State University of New York, the State Education Department for the Board of Regents, and the Board of Education on behalf of the New York City Chancellor of Public Schools. Theme-based interviews were semi-structured, allowing respondents to discuss issues of interest to them and their agency. Interviews focused on the institutional history of the authorizers; the development and goals of their application, authorization, monitoring, support, and renewal processes; how the agencies were conceptualizing performance-based, as well as regulatory and contractual accountability; their challenges and priorities; and their relationships to schools and to the other charter school authorizing agencies.

To obtain information on how the authorizers' initiatives were experienced at the school level interviews were conducted with staff in eight New York City charter schools, as well as with their nonprofit or for-profit institutional partners. These interviews focused on the charter school application process, the authorizers' site visits, reporting requirements, and other issues related to the schools' relationships with their authorizers.

Throughout the three years of our research, we also attended monthly meetings of the New York State Coalition of Charter Schools, a voluntary group organized by the Center for Educational Innovation-Public Education Association (CEI-PEA) for charter school administrators, institutions partnering with charter schools, charter school authorizers, and others involved in charter reform in New York State. In 1999-2000, we also observed two charter school monitoring visits conducted by the authorizing agencies and sat in on exit conferences between the authorizers and the school staff. These visits gave us insight into an oversight activity that combines regulatory with contractual accountability. In 2001-2002, we

attended an accountability conference organized by the State University of New York's Charter Schools Institute, which focused on the performance aspect of charter school accountability and the assistance schools would need for success in the renewal process.

Finally, we reviewed a variety of documents: the application forms and pre-opening check lists; accountability and site-visit protocols; contracts or memoranda of understanding between the charter schools and authorizers; and the proceedings of the Board of Regents concerning several charter schools seeking approval or experiencing difficulties.

II. The Complex Nature of Charter School Accountability: The Authorizers and their New York City Charter Schools

Performance-based accountability, often expressed as the accountability/autonomy exchange, has become a paradigm for charter school reform. A Charter Schools Insitute report issued in 2002 describes the exchange New York's charter schools make:

> Public charter schools are given a blanket waiver from many state regulations governing education. This allows them greater flexibility in determining curriculum, staffing, hours, budgeting and other features. In return for this flexibility, public charter schools are held to a level of accountability unmatched in public education.[9]

Given the increasing pressure on all New York State public schools to meet performance standards, this is a high claim. Yet two mechanisms potentially make this claim real. First, the charter is a legal contract; if charter schools do not meet the accountability goals detailed in their charters–or in the case of SUNY/CSI schools, their accountability plans–by law they are to be closed. Second, by contrast with traditional public schools, there is a clear and definite "life or death" moment at the end of the five-year charter at which charter schools' success in reaching their student performance goals is evaluated.[10] As we discuss in Section IV, it is this moment that potentially actualizes performance-based accountability. It is also the point that has caused charter authorizers in other states the greatest difficulty for technical and political reasons, including the fact that families sometimes want the schools to remain open.

By contrast with traditional public schools, there is a clear and definite "life or death" moment at the end of the five-year charter at which charter schools' success in reaching their student performance goals is evaluated.

New York's most senior charter schools will have completed their five-year charters in spring 2004, and all three authorizers appear committed to making that event the performance-based moment of truth. CSI, which requires a separate accountability plan of each of its schools, has provided

[9] CSI/SUNY. *Charter Schools in New York: A New Choice Public Education* (Albany, NY: Author, 2002), p. 6.

[10] Not all states have implemented the performance-accountability contract, for reasons we discuss in Section IV. As this report is being written, seven Ohio charter schools were renewed, even though only one had met its performance target (*Akron Beacon Journal*, 11 December 2002, sec. A, pp. 1-4).

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technical assistance on accountability to its schools since their inception, as well as sponsored a one-day conference on accountability in October 2001 for all charter schools in the state. The Chancellor/BOE initiated a new annual report protocol in spring 2002, which includes several performance-based accountability components. And, throughout the three years, the Regents/SED has been proactive in mandating the New York State performance standards and assessments as the context for all charter school performance measures. Moreover, while SUNY/CSI has placed one school on probation, the Chancellor/BOE and the Regents/SED have each closed a charter school–the latter, before the school actually opened. Finally, all three authorizers are working toward a system of standards and procedures for renewal.

Below we analyze the oversight activities of the three authorizers. Our analysis follows the chronology of these activities, as experienced by charter school operators, beginning with contractual accountability, the charter, and continuing with performance-based, represented by the outcome promises, and regulatory accountability, actualized by reporting requirements. We then discuss two oversight activities that include more than one accountability mode: site visits combine regulatory with contractual accountability, and the probation-school closure continuum mixes all three types of accountability.

III. From Application to Contractual Accountability

The first step in starting a charter school is choosing one of New York's three charter school authorizers and filling out the application form. (Public schools converting to charter status must go to their district authorizer.) While charter school applications establish the blueprints by which New York's charter schools operate, they also act as legal contracts between the authorizers and the schools. Following a business model, authorizers can hold the schools to the specifics of their charters, and charter schools are expected to submit amendments to their charters before making "material" changes in their educational programs or operations.

Over the past three-years, SUNY/CSI has revised its application form each year, and the Regents/SED and the Chancellor/BOE have issued two versions. As applications have been actualized as charter schools, the authorizers' attempts to implement contractual accountability have raised questions about both what needs to be in the application, and what constitutes an adequate response by a prospective charter school operator. Not surprisingly, a growing understanding of the dangers of newness, as well as the components of a successful school, has led all three authorizing agencies to applications that are longer, more detailed, and more sophisticated, requiring numerous exhibits and attachments. Moreover, the level of expectations at all three agencies has been raised. As a member of the BOE's charter schools office noted in 2000-2001, "We are learning that if we want to see it in a school, we need to ask for it in the application."

"We are learning that if we want to see it in a school, we need to ask for it in the application."

Beyond describing the educational program and assessments that will be used to measure student progress in the proposed school, applicants must show how the instructional programs will "meet or exceed the student performance standards adopted by the Board of Regents for other public schools."[11] For SUNY, this means that the applicant must match the proposed school's program with Regents standards in those subject areas

[11] New York Charter Schools Act of 1998, Article 56 of the New York State Education Law, Section 2851, 2b.

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currently tested by state assessments. However, both the Regents and the Chancellor/BOE increase the arenas of contractual accountability by asking prospective schools to "provide assurance that students will receive instruction that leads to the attainment of all 28 [New York State] learning standards at the levels (elementary, intermediate, secondary) specified in the charter."[12] Prospective founders are also asked by all three agencies to describe how they intend to serve students with disabilities, special education students, and students who are English Language Learners. In this, they will be held both to their charters (contractual accountability) and to the federal and state laws upon which their plans are to be based (regulatory accountability).

Plans for food and health services, for transportation, and for insurance must be detailed. Schools are asked to provide an admissions process; a discipline policy; a code of ethics for trustees, officers, and employees; and complaint or grievance procedures. Five-year budgets must be presented, along with a discussion of the assumptions used to determine revenue and expenditures, and evidence that projected money and facilities exist and are viable. Indeed, all three authorizers are increasingly concerned with school finances, particularly the ability to leverage the leasing and renovation of school buildings.[13]

The three agencies agree that a group of parents is unlikely to be able to complete a successful application without professional help–both because of the expertise needed to complete the application forms, and because of the evidence of private financial support required by the authorizers before granting a charter.

Contrary to the popular notion that parents can work together to found charter schools, 84 percent of New York's charter schools have nonprofit or for-profit partners, who were involved in the application process. The three agencies agree that a group of parents is unlikely to be able to complete a successful application without professional help–both because of the expertise needed to complete the application forms, and because of the evidence of private financial support required by the authorizers before granting a charter. Of the two New York City cases where parents and community members initiated a successful charter, one parent group joined with a nonprofit organization that had already produced a successful application for another school and was willing to complete the application process and assist with some of the costs of startup. The second contracted with a for-profit education management organization (EMO) that took charge of the application and fronted the startup costs.

[12] New York State Education Department, Charter School Applications and Technical Assistance Advisory, August 2001; [http://www.emsc.nysed.gov/rscs/charter/csappandtechassistadvisory.htm]; Chancellor's Charter School Application, n.d.; [http://www.nycenet.edu/charterschools/application].

[13] Facilities have been one of the greatest challenges facing charter schools, particularly in New York City where space is scarce and rent is high. In year one, several schools were chartered before the applicants had facilities in hand. Having received their charters, they rushed to start schools in spaces that were inappropriate and/or too small for growth. One school then amassed so much debt as it attempted to rent and renovate new facilities that its very existence was threatened. All three authorizing agencies have learned hard lessons in this area, and have come to insist, as an SED official put it, that there is, "evidence from a landlord that he is ready to enter into a leasing agreement."

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Private partnerships have been among the first clear tests of contractual accountability. Three New York charter schools have changed their EMOs, which the three authorizers have viewed as constituting a "material change," necessitating revisions to their charters. Moreover, several charter schools included promises of support in their applications that didn't materialize, and so had to make programmatic adjustments. This, in turn, has provoked the difficult question for authorizers of what changes a school can make and still be considered as following its charter. Moreover, the disturbance to school functioning as a result of decreases in support has prompted all three authorizers to ask prospective founders to describe their relationships with EMOs and other partners in greater detail. All three also ask for information on the services to be provided, fees to be charged, and, if the company is for-profit, the period of the contract and the provisions for its renewal or termination. If the proposed school is contracting with a for-profit education management company, SUNY/CSI also asks for copies of the last two contracts the management company executed with operating schools, the company's most recent annual report, and a "description or summary reports of student achievement results in schools managed by the entity."[14]

All three authorizers ask prospective founders for information on the services to be provided, fees to be charged, and, if the company is for-profit, the period of the contract and the provisions for its renewal or termination.

New York charter law states that schools undergoing "material changes" must apply for amendments to their charters, but the law does not offer criteria for a material change. Thus the three authorizers have responded differently in how they determine whether a proposed change warrants an amendment of the charter, and how likely they are to approve the amendment.

Although all three authorizers use site visits to ensure that their charter schools are implementing the operational and programmatic promises made in their charters, SED officials bring protocols listing the school's promises to each site visit, and officials must note on each item whether they saw evidence of the school's promises in the school. A member of the SED's charter school staff, who had also worked with low-performing Schools Under Registration Review (SURR), described the charter as "like a Redesign Plan used for last-stage SURR schools, only with a higher level of scrutiny and more binding legal power." Although the Regents/SED have struggled to define a "material change," they have come to view it as

[14] State University of New York/Charter Schools Institute. *Charter Schools Application Kit.* (Albany, New York: Author, 2002), 4rd., pp. 30-31.

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anything involving changes in central school programming, curriculum, school culture, and the management of school operations.

SUNY/CSI has developed three criteria to determine whether or not a change in the charter is needed: Does the change affect the core of the school? Is it temporary or multi-year? Does it alter the student enrollment? In 2001-2002, a CSI executive described revisions to the charter as necessary only when changes "affect the DNA of the school." Changes in instructional focus are considered material changes, whereas the addition or subtraction of an hour in the school day, or changes made for one year only, rather than for the life of the school, are not considered to require a revision to the charter. Since the Regents have assumed their legal right to exercise final approval over all charter revisions, SUNY/CSI also brings potential revisions to the SED, sometimes arguing why a particular change does not necessitate a charter revision.

Finally, the BOE's office of charter schools decides on a case-by-case basis, in consultation with the SED, whether or not the change sought by a school is "material." While the office has been clear that requests for programmatic, enrollment or fiscal changes that suggest budget shortfalls signal danger, and so cannot be routinely granted, staff in the BOE charter school office also noted how a sense of proportion must be maintained in deciding whether to involve the SED and the Board of Regents, who are deciding policy for the entire state each month, in decisions concerning a change in a single charter school.

Strengths and Challenges of Contractual Accountability. In any contract between a government agency and a nonprofit organization, whether the nonprofit will be responsible for running an agency, a hospital or a school,

> ...each party must perform a delicate balancing act. The nonprofit must weigh the benefits of engagement against the perils of entanglement. The government agency must afford the nonprofit enough autonomy to benefit from its flexibility and creativity, all the while holding it accountable for furthering public purposes.[15]

[15] Hassel, B. C. "Balancing Acts: What Charter Schools Teach Us About Government-nonprofit Contracting." *Nonprofit and Voluntary Sector*, 26, no. 4 (1997, December): 442-465.

Since an accepted charter school application becomes the charter under which schools operate, a strong application should lead to a good school. Indeed, this is the reason for the increasing level of thoughtfulness and detail required by the applications of all three New York authorizers. Yet the relationship between a well-crafted application and a strong school remains elusive, as staffs in all three agencies admit. This is particularly so when it comes to applications submitted by educational management companies, which use large sections of boilerplate for their charter school applications. Moreover, if charter schools are to meet the challenges of growth and a changing student body, they need some flexibility. Indeed, the danger of contractual accountability, if inflexibly interpreted by the authorizers, is a "compliance mentality" on the part of charter school practitioners.

Yet the relationship between a well-crafted application and a strong school remains elusive, as staffs in all three charter authorizing agencies admit.

Until now, New York City charter schools have faced the prospect of a charter revision with concern, if only because of the time and paperwork involved, and so have sought to negotiate changes that would not be considered "material" by their authorizers and the Regents. At the same time, the authorizers have learned the benefits of targeting school design questions in the application to those elements necessary for meaningful oversight. A state official commented,

> Our focus is: what are you going to do? And how will you know that you are successful? We don't care what you teach, but we want to see evidence that it is connected to outcomes. If you are doing portfolios, then show me your scoring rubric.

Whatever its complications, contractual accountability does have an important use for the authorizers. Requests to eliminate a promised after-school program, decrease the length of the school year, significantly cut enrollment, or change the constituency of the board of trustees have all alerted authorizers to the possibility that a school is experiencing problems with its facility, operations, or budget.

Requests to eliminate a promised after-school program, decrease the length of the school year, significantly cut enrollment, or change the constituency of the board of trustees have all alerted authorizers to the possibility that a school is experiencing problems with its facility, operations, or budget.

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IV. PERFORMANCE-BASED ACCOUNTABILITY: THE CHARTER AND ACCOUNTABILITY PLAN

Since the Regents/SED and the Chancellor/BOE hold their schools accountable for the student achievement promises contained in the charter, both agencies make sure that the schools' performance goals (which must be framed within the state's accountability system for all public schools) are defined and measurable. The Regents/SED application asks prospective charter school founders about the level of student achievement expected at each grade level, the number or percent of students who will attain those goals, and by what year. Applicants are also asked to detail how student achievement will be assessed, and the SED application asks applicants to explain how they know that these assessments measure what will be taught.[16]

The Chancellor/BOE's accountability plan, also integrated into the charter application, asks schools how they intend to monitor school progress; their plans for reporting progress to parents, the Chancellor, and other stakeholders, and with what frequency. Finally, applicants must state the criteria by which they wish to be evaluated for charter renewal.

SUNY/CSI argues that a school can plan more realistically for its performance-based accountability once it has hired its teachers and assessed its students.

By contrast with both the state's and New York City's charter offices, SUNY/CSI argues that a school can plan more realistically for its performance-based accountability once it has hired its teachers and assessed its students. Thus, SUNY/CSI uses a separate accountability plan to be completed during the charter school's first year of operation. This accountability plan asks schools to describe their mission, define their goals, and, most important, determine how they will measure yearly progress towards their goals by both students and the school. Schools must include absolute, value-added, and comparative measures of student achievement. Charter schools are also expected to project how they will assess non-academic aspects of their mission, as well as the school's "organizational viability."

[16] This can be seen as a response to the two conversion charter schools which claimed that state assessments would force them to change their curriculum, and, more widely, to a small but active coalition for Performance Based Assessments that has staged a determined campaign to retain their exemptions from state standardized tests for alternative schools with experimental curriculum. Thus, by this requirement New York State is also sending the message that it will not look with friendly eyes at prospective schools whose curricula are not aligned to the state tests.

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Strengths and Challenges of Performance-Based Accountability. In New York State, the actualization of the legislative promise "to change from rule-based to performance-based accountability systems" has taken place in the context of a state system in which traditional public schools, while not being relieved of rules and regulations, have experienced increasing performance-based accountability. Since the early 1990s, all of the roughly 4,250 public schools in the state have been subject to state standards and curriculum frameworks; the beginnings of a staged introduction of new subject-based state tests required for promotion in grades 4 and 8, as well as for high school graduation; and the public reporting of school performance on all these tests. Moreover, a state system for placing low performing Schools Under Registration Review (SURR), with the potential for closure if schools fail to improve, has existed for over a decade. In New York City, a virtual district under the direct supervision of the Chancellor of Public Schools (District 85) was created in 1996 for those schools that did not improve after being identified for SURR; the approximately fifty schools in this district receive extra supports and are required to follow a range of programmatic and instructional initiatives. Finally, thirty New York City public schools have been closed for persistent failure over the past twelve years.

One of the purposes of New York State's charter law has been to offer "expanded learning experiences for students who are at risk of academic failure."[17] Although New York City's charter schools must accept lottery applicants citywide, the city's twenty-four charter schools have largely been situated in community school districts whose average reading scores are below the (already low) citywide average. The graph below shows citywide reading score averages, and the districts in which both SURR schools and charter schools (the darker bands) are located. The average test scores of these districts are actually inflated as a result of District 85, the Chancellor's virtual district that groups the city's lowest-scoring schools. While most of the low-performing districts with charter schools have only one or two charter schools each, community school district 9, which has nine SURR schools, also has four charter schools.

One of the purposes of New York State's charter law has been to offer "expanded learning experiences for students who are at risk of academic failure."

[17] New York Charter Schools Act of 1998, Article 56 of the New York State Education Law, Section 2850, 2b.

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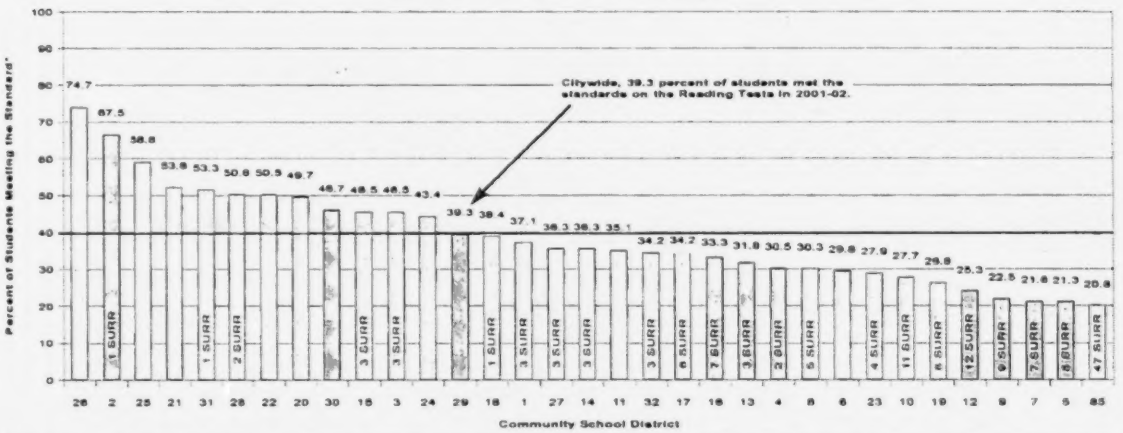
CHART I: NYC COMMUNITY SCHOOL DISTRICT AVERAGES ON THE CITY AND STATE READING TESTS IN 2001-02, WITH CHARTER SCHOOLS, SURR AND CHANCELLOR DISTRICTS SCHOOLS



Sources: NYC Board of Education, Test Results Files, released in July 2002 and 2000-01 Annual School Report. Meeting the standards means scoring in Level 3 or 4 on the NY State English Language Arts Exam or the NYC CTB Reading. These data include all students tested in grades 3, 4, 5, 6, & 8. The NYC BOE and its test publisher, CTB/McGraw Hill agree that the results of the 2002 reading test given to 7th graders should not be released because they appear inconsistent with other available information. These data and the number of SURR schools in each district together with the number of Chancellor District schools where applicable geographically located in each district. In addition to the 47 Chancellor District schools, there were 56 SURR schools operating in their own administrative CSDs (for a total of 103 low performing schools).

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While the state's well developed system of performance-based accountability should prompt authorizers to hold charter schools accountable for their performance, given the student populations in New York City's charter schools, authorizers will face serious challenges in making their renewal decisions.

At the other end of the spectrum, two of the three charter schools in relatively high-performing districts (community school districts 30 and 2) are alternative schools that converted to charter status. New York City's highly elaborated accountability system, as well as the at-risk communities in which charter schools are located, form the educational context for the activities of New York's three charter school authorizers. While the state's well developed system of performance-based accountability should prompt authorizers to hold charter schools accountable for their performance, given the student populations in New York City's charter schools, authorizers will face serious challenges in making their renewal decisions.

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V. REGULATORY ACCOUNTABILITY: REPORTING AND DOCUMENTATION

New York's charter law makes the charter school authorizers responsible for ensuring their schools' "compliance with all applicable laws, regulations and charter provisions."[18] In addition, the law gives both the Regents and the New York City Chancellor of Public Schools oversight responsibilities as part of their state and district roles.

The primary unit of state oversight for traditional public schools is the district, which in turn is responsible to the State Education Department (SED), and ultimately to the Board of Regents. As the Regents' administrative arm, the SED has oversight responsibilities for all New York State public schools, including all charter schools, particularly regarding compliance with state and federal law. Since charter schools are legally their own Local Education Agency except for special education services (which are still under the jurisdiction of the geographic district), officials from the SED charter school offices, as well as from other relevant divisions, have monitored charter schools both as districts and as individual schools.

New York's charter law also gives school districts in which charter schools are located "the right to visit, examine into, and inspect" charter schools, including those which they have not authorized, for legal and regulatory compliance. Thus, officials from the Board of Education's charter school office have taken on oversight responsibilities for *all* New York City charter schools.

All three authorizers use reporting requirements as their only purely regulatory tool. Dubbed "desk monitoring" by one authorizer, the required reports cover finances, operations, and instruction.

As their own nonprofit 501(c)(3) organizations, charter schools are subject to the same quarterly fiscal reports required of any other nonprofit agency.

[18] New York Charter Schools Act of 1998, Article 56 of the New York State Education Law, Section, 2853, 2a.

All charter schools must also provide their authorizers with annual reports, as required by law.

These fiscal reports itemize public and private funding sources and describe areas of school spending. In addition, charter schools are responsible for bi-monthly billing reports, which detail the enrollment in the school and so determine the per pupil allocation they receive from the districts in which they are located.

All charter schools must also provide their authorizers with annual reports, as required by law. These reports include audited and certified financial statements, as well as narrative reports. The Regents/SED's and SUNY/CSI's annual report requirements are rather minimal. Regents' schools must provide student assessment measures, including progress made toward the educational goals outlined in the charters, and a report of revenues and expenses, by category. (The SED also looks at measures of academic and fiscal performance, as compared to the charter school's district of location.) Similarly, SUNY charter schools must provide a school report card, and a discussion of the school's progress toward the achievement of the goals set forth in the charter, in their annual reports.

In spring 2002, the New York City Board of Education created a new and expanded annual report format as an additional accountability tool. To be completed each August, the BOE annual report covers reporting and planning in six major areas: students, teaching and learning; families and community; staff; operations and facilities; finance; and governance. The annual report format presents trigger questions in all six areas and schools must provide a description of their planning in each area. Schools are asked to reflect on their performance data, by describing how these data compare with previous outcome data, what can be learned from this comparison, and what instructional changes the school expects to make in response to the data.

The following chart represents SUNY/CSI's schedule of reporting requirements. Since New York City charter schools authorized by SUNY/CSI must submit reports to their authorizer, as well as to the Regents and the Chancellor, the number of submissions is greater for SUNY/CSI charter schools than for charter schools operating under the other two authorizers. Nevertheless, the list represents the frequency of reporting requirements for charter schools in New York.

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CHART II: REPORTING REQUIREMENTS FOR SUNY/CSI CHARTER SCHOOLS IN 2001-02[19]

Date Due	Submit To	Name
June 1	District(s) of residence SED CSI	1st bi-monthly attendance & enrollment billing report
August 1	District(s) of residence SED CSI	2nd bi-monthly attendance & enrollment billing report
August 1	SED CSI	Annual Report ▫ School report card ▫ Copy of most recent independent fiscal audit ▫ Copy of certified financial statement for past fiscal year ▫ Discussion of progress made towards achievement goals set forth in charter
August 1	CSI	Accountability Plan Progress Report
August 15	CSI	Quarterly statement of income and expenses (for quarter ending June 30)
August 30	CSI	Roster of teachers (indicating certification status)
October 1	District(s) of residenc SED CSI	3rd bi-monthly attendance & enrollment billing report
October 30	SED CSI	Annual Financial Audit Report (due 120 days after close of school year)
November 15	CSI	Quarterly statement of income & expenses (for quarter ending September 30)
December 1	District(s) of residence SED CSI	4th bi-monthly attendance & enrollment billing report
December 1	CSI	Student admission and recruiting information
January 28	District(s) of residence SED CSI	5th bi-monthly attendance & enrollment billing report
February 15	CSI	Quarterly statement of income & expenses (for quarter ending December 31)
April 1	District(s) of residence SED CSI	6th bi-monthly attendance & enrollment billing report
April 1	District(s) of residence	Parental requests for transportation
May 15	CSI	Annual Budget & Cash Flow Report (for next fiscal year)
May 15	CSI	Quarterly statement of income & expenses (for quarter ending March 31)
June 1	District(s) of residence SED CSI	1st bi-monthly attendance & enrollment billing report

[19] CSI Reporting Requirements, 30 October 2002, for charter schools that have completed their first year of instruction.

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Charter school by-laws, schedules, calendars, lottery procedures, student admission and discharge documents, student and teacher attendance records, discipline and grievance policies, minutes of board of trustee meetings, evidence of criminal background checks for all staff and volunteers, and proof of teacher certification are among the documents requested by all the authorizers. They are meant to ensure either that the charter schools are following the law or that they are prepared internally to handle school difficulties.

The Strengths and Challenges of Regulatory Accountability . Charter reform was initiated across the country in response to the widespread perception that public schools suffer from over-regulation. Indeed, charter schools in New York, as in many other states, are permitted by law to control their own grade levels, staffing,[20] hours, and other issues critical to shaping a school. However, they are still subject to multiple reporting requirements.

As in traditional public schools, charter school administrators experience these reporting requirements as burdensome. In those charter schools with nonprofit or for-profit partners, it is the partners who often take on the regular reporting responsibilities. Those few charter schools without partners, however, must assume the responsibility themselves.

Insofar as reporting requirements help to make schools self-reflective, or are used in connection with useful site visits or other forms of oversight that support the development of effective schools, they can be viewed by the schools as having real value.

Insofar as reporting requirements help to make schools self-reflective, or are used in connection with useful site visits or other forms of oversight that support the development of effective schools, they can be viewed by the schools as having real value. For example, BOE charter school administrators and teachers use their annual reports for discussions with their authorizer during site visits. This makes it a living document of use to both sides. But schools have reported an increasing fear that authorizers may too easily cross the borderline between useful and onerous reporting.

Although authorizers may understandably respond to financial, operational, or pedagogical problems in their schools by adding a new reporting requirement, charter reform places pressure on authorizers to address difficulties in ways that are meaningful and do not place undue burden on charter schools.

[20] Since conversion charter schools remain under collective bargaining, they have somewhat less control over staffing.

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VI. Combining Accountability Modes

Both site visits and the processes established for schools in difficulty combine two or more accountability mechanisms.

A. Site Visits - Regulatory and Contractual Accountability

Although site visits combine regulatory and contractual accountability, and often include technical assistance, they follow the same legal basis and structure as reporting requirements. That is, their goal is to ensure that their schools are "in compliance with all applicable laws, regulations and charter provisions," including the legal mandate that the schools follow their charters.

Taking seriously the autonomy provided by charter school law, New York's three authorizers were initially uncertain about how often they should visit the schools they chartered or what–beyond checking for compliance on a range of federal and state regulations and comparing their charters' promises to the reality of the schools–they should do during their monitoring visits.

Over the past three years, all three authorizers have developed set routines and frequencies for site visits. While the upstate and downstate office of the SED have somewhat different protocols, the SED has also differentiated their site visits to Regents-authorized and other New York State charter schools. The Board of Education has visited all charter schools in New York City, as provided by law, and has played a more proactive role with its own schools. Finally, as an agency without jurisdictional responsibilities, SUNY/CSI has focused on instructional and organizational issues in its own schools, while increasingly leaving regulatory oversight issues to the State Education Department and/or the New York City Board of Education.

Over the past three years, all three authorizers have developed set routines and frequencies for site visits.

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Chart III, below, represents the oversight visits conducted by New York State's three authorizers in 2001-2002. Visits by the State Education Department's office of charter schools are divided into the upstate and downstate locations. Because in some instances authorizers conduct simultaneous visits, individual charter schools may not experience as many separate visits as it appears in the chart.

CHART III: OVERSIGHT VISITS TO NEW YORK CITY CHARTER SCHOOLS IN 2001-02

	Regents/SED Upstate Charter Office	**Regents/SED Downstate Charter Office**	**SUNY/CSI Charter Schools**	**Chancellor/BOE -all NYC Charter Schools**
Pre-opening[21]	Pre-opening checklist visit	Pre-opening checklist visit	Prior action checklist visit	Pre-opening visit
Year 1	Beginning of year visit and checklist Spring visit Initial visit and checklist of *all* NYS schools	Beginning of year visit One unannounced visit One informal visit Extensive spring visit Formal year-end visit	Two informal visits One formal visit	*All* NYC charter schools along with SED Spring & fall visits to Chancellor/BOE schools
Year 2	Beginning of year visit and checklist of *all* NYS schools Spring visit	Meeting with principals	Two informal visits One formal visit	Spring & fall visits to Chancellor/BOE schools
Year 3	Beginning of year visit and checklist Comprehensive monitoring of *all* NYS schools	Comprehensive monitoring of Board of Regents schools Off-site fiscal audit	Formal review by an outside agency	*All* NYC charter schools along with SED Spring & fall visits to Chancellor/BOE schools
Year 4	Beginning of year visit and checklist of *all* NYS schools Spring visit	To be determined	To be determined	Spring & fall visits to Chancellor/BOE schools
Year 5	To be determined	To be determined	To be determined	To be determined

[21] Both the Regents/SED and SUNY/CSI pay formal visits to their schools prior to opening using a series of checklists to establish that schools have boards of trustees, certificates of occupancy for the buildings, chairs for students, and the required number of teachers–in short, that key elements in the charter have become real and everything is in order. The Board of Education's charter school office has paid similar pre-opening visits to their schools, although it is only now establishing a more formal checklist.

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The SED was the first of the three authorizers to use site visits as an important oversight tool, and to establish an extensive checklist of regulatory issues to be reviewed during visits. The SED's on-site review protocol has focused on sixteen programmatic and procedural areas related to the law and/or the charter agreement. Where the schools have made specific promises in their charters that go beyond the law, the protocol has spaces to pre-enter the charter agreement, and the visiting team is expected to provide evidence that the school is or is not following its charter.

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For the State Education Department, regulatory responsibilities toward charter schools have been a natural extension of its responsibility for monitoring federal categorical funds and IDEA, the federal law guaranteeing a free appropriate education to children with disabilities. Moreover, the state database on teacher certification has facilitated the monitoring of charter school requirements for teachers. Although both charter schools and the other two authorizers have at times viewed the SED as "overly-regulatory," it is important to note that SED officials do not view regulation as separate from improving teaching and learning, and that the SED in behalf of the Regents is ultimately responsible for school quality and finance throughout New York. As one SED official put it, "Regulations attempt to codify good actions." This official also explained the office's rationale for non-instructional monitoring:

As one SED official put it, "Regulations attempt to codify good actions."

> Some feel that [charter school oversight] should be results-oriented. We can't do that because when [a school] fails, people will ask regulatory questions about insurance, building occupancy, money, and so forth. Unfortunately, most monitoring is intrusive to those who do the right thing, because it is meant to catch those who are doing wrong.

Whatever their complaints, SUNY/CSI and the Chancellor/BOE have come to appreciate the SED's regulatory role. A CSI member put it this way: "They check to make sure there is a padlock on the drawer where the IEP's [individual education plans for special education students] are kept, so we don't have to. This frees us up to look at the academics, school culture, those kinds of things."

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As of spring 2002, the BOE began using the school's Annual Report to structure site visits to its own schools. BOE staffs engage in discussions with the charter schools in the six areas identified in the annual report (students, teaching and learning, families and community, staff, operations and facilities, finance, and governance); data are reviewed, and plans to solve problems discussed. This comprehensive approach proved worthwhile at the end of the 2001-2002 school year when site visits revealed that one New York City charter school was experiencing operational and governance crises; at the same time, teaching and learning were strong in the school. The charter school was given time and provided with a probationary plan to help solve its difficulties.

In 2001-2002, following the precedent of Massachusetts, the CSI and School Works, an education consulting group that conducts site reviews, jointly developed a protocol for inspecting schools that were in the third year of their five-year charters. The purposes of the inspection were to provide a third-party assessment of each school's progress, and to assist the school as it prepared for charter renewal in the fourth and fifth years. The visiting team spent a day in each school interviewing administration, staff, board of trustee members, and parents; observing classes and conducting exist interviews. Using some of the tenets of the English school inspection system, the observers rated SUNY charter schools as "exceptional," "proficient," "partially proficient," or "not proficient" on ten issues related to instruction. Although records from these visits will be analyzed as part of the charter's renewal process, a CSI executive insists that students' achievement is ultimately the only ground for renewal: "We tell them, as far as qualitative impressions go, you can take them and dump them down the trash if the test scores aren't good."

"We tell them, as far as qualitative impressions go, you can take them and dump them down the trash if the test scores aren't good."

The Strengths and Challenges of the Site Visit. Charter schools operate under fewer state and district regulations than do traditional public schools; nevertheless, the rules and regulations that charter schools must follow are closely monitored. Site visits by the three authorizers, though different in frequency and foci, offer more frequent oversight by more agencies than that experienced by traditional public schools. These authorizer site visits therefore raise the question of whether charter schools are experiencing the

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autonomy sought by charter reform, and, conversely, whether traditional public schools would benefit from a similar intensity of regulatory oversight.

In addition, authorizers use site visits to offer their charter schools support in instructional and operational areas. For example, CSI holds discussions about data and accountability, and the BOE structures conversations in which their charter schools are asked to use data to reflect on strengths and weaknesses in instruction. While all three authorizers argue for the importance of offering new schools support, all three are also clear that offering technical assistance in school decisions concerning staffing, classroom management, and instruction can potentially conflict with a revocation (or renewal) decision at the end of five years. Indeed, as we report in Section IV, authorizers in some states have purposely blunted their renewal/closure decisions with upfront technical assistance. The challenge for New York's authorizing agencies will be to offer needed technical assistance while remaining sufficiently distant to actualize performance-based accountability.

These authorizer site visits therefore raise the question of whether charter schools are experiencing the autonomy sought by charter reform, and, conversely, whether traditional public schools would benefit from a similar intensity of regulatory oversight.

B. Combining the Three Oversight Mechanisms in Charter School Probation and Closure

School choice advocates often argue that when there are choices, good schools will attract students, while troubled schools will close as students leave to find better options elsewhere. That is, when school-wide test scores or other measures of school effectiveness are publicly available, the market will create its own accountability. In New York City, students and their families have had a wide range of choices, including selective high schools, magnet schools, small schools, and alternative schools, long before charter schools ever opened. But factors other than school performance have made both charter and traditional public schools attractive to families, including safety, small size, and proximity to home or jobs. Moreover, parents have often clung to troubled schools, even resisting the closure of SURR schools.

Just as health inspectors at times close restaurants for health violations that threaten public safety, even when the restaurants are doing brisk business,

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Just as health inspectors at times close restaurants for health violations that threaten public safety, even when the restaurants are doing brisk business, one of the primary roles of charter school authorizers is to make decisions about charter school renewal and, if necessary, to close charter schools before the term of the charter expires.

one of the primary roles of charter school authorizers is to make decisions about charter school renewal and, if necessary, to close charter schools before the term of the charter expires. Although, nationally, sanctions against charter schools by authorizing agencies have been largely for fiscal and management problems,[22] low standards for instruction, as well as low achievement, have been important determinants of probation and closure in New York. In the first three years of charter reform, out of forty-eight charters issued, one was retracted before the school opened; one school was placed on probation; and another was closed. In the latter two cases, low-test scores as well as operational and fiscal mismanagement played a role. This is a significantly higher standard for instituting corrective action than exists among traditional public schools, even for schools in the SURR process.

Nevertheless, New York's charter schools with academic and operational difficulties have not been closed summarily. Indeed, as the two accounts below suggest, authorizers in New York have used a range of regulatory and contractual tools to level sanctions against low-performing charter schools.

Probation. New York education law states that there are four grounds for revocation or termination of a charter:

- Student outcomes falling below acceptable levels for other public schools and/or those outcomes not having improved over a three-year period;
- Serious violations of law;
- Material and substantial violations of the charter, including fiscal mismanagement, and;
- A demonstrated pattern of violations of law involving interference with or discrimination against employee rights.

In 1999, the CSI developed a system of progressive discipline for its charter schools. Starting with corrective action and moving through probation to

[22] SRI International. *Evaluation of the Public Charter School Program: Year One Evaluation Report.* (Washington DC: US Department of Education, Office of the Undersecretary, 2000).

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termination, the system can be seen as combining regulatory and contractual accountability. Corrective action was meant to focus the school's attention on issues that are not in violation of law but may impede the school in reaching its professional objectives. A school demonstrating one of the four grounds for revocation would trigger probation. Placing a charter school on probationary status would give the authorizer the right to insist that the school implement a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan could result in summarily revoking the school's charter.

Corrective action was meant to focus the school's attention on issues that are not in violation of law but may impede the school in reaching its professional objectives.

Probation was first used by the CSI with an Albany charter school, in spring 2000. The school had received one of the first charters in the state, and had opened in fall 1999 as a partnership between a local chapter of a nonprofit organization and a for-profit EMO. The charter school experienced a myriad of problems during its first year, including the resignation of the EMO, a high turnover of students and staff, fiscal mismanagement, conflicts of interest among members of the board of trustees, and poor performance on the state's fourth-grade English Language Arts assessment.[23] Towards the end of the 1999-2000 school year, visits by both the CSI and the SED found the school suffering from "serious violations of law and of the school's charter."[24]

The nonprofit organization partnered with a new for-profit company (necessitating a material change in the charter), and a new application was submitted to the CSI in July 2000. Because of the severity of problems in year one, the charter school was re-opened in September 2000 under probationary status. A remedial action plan demanded a cap on student enrollment at 400; the appointment of a third party to monitor the financing and construction of a permanent facility; the submission of monthly financial reports to the SED; the submission of mid-year and year-end performance reviews; and the provision of training sessions for board of trustee members on their duties.[25] Despite leadership and staff turnover, and conflicts with the EMO over the size of the student body during the next two years, the school was removed from probation in spring 2002, having met the remedial action terms of its probation.

[23] Wyatt, E. "Charter School's Problems Yield Cautionary Tale." *The New York Times*. 18 August 2000, sec. A1, B5.

[24] Kuo, A. "SUNY Trustees Approve New Covenant's Revised Charter." *Buffalo Globe*. 28 August 2000, p. 18.

[25] Saunders, S. "Albany Charter School Gets a Second Chance." *New York Teacher*. 13 September 2000, 42, no. 1.

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School Closure In July 2001, the New York City Chancellor, with strong support from the SED, placed a charter school on probation for the first time. The conversion school had significantly reduced its school calendar and eliminated its extended day program; classroom supervision and teaching materials were deemed inadequate or inappropriate, and test scores at the end of the first year had been extremely low.[26]

Working with the charter school, the BOE designed a corrective action plan, which listed the steps that the charter school needed to take to solve its academic, operational, and fiscal difficulties. The school responded with a written remediation plan in August 2001, which staff at the BOE's charter school office viewed as an insufficient response. Although charter law allows an authorizer to revoke the charter of any school on probation (the school was notified that the Chancellor intended to recommend revocation of the school's charter), the school was allowed to produce a revised remediation plan and remain on probation throughout the 2001-2002 school year.

In March 2002, an evaluation team brought together by the BOE's charter school office visited the school for two days, using a New York City Charter School Performance Assessment (CSPA) protocol. Originally developed by the Board of Education's Office of Accountability for visits to SURR schools, and now used for all BOE schools, the CSPA protocol includes a total of sixty indicators of school climate and mission; curriculum, instruction and assessment; staff development and resources. In addition, the protocol includes a self-evaluation component. Of the sixty indicators, the school was found to be operating "below standard" on forty.[27] In the same period, the State Education Department's Office of Audit Services reviewed the school's management controls and financial conditions and reported serious concerns.

In April 2002, the Chancellor provided the conversion charter school with a second notice of his intent to revoke the charter. Reflecting on the Chancellor's second notice, the director of the charter schools office explained that the Chancellor had chosen not to summarily revoke the charter to give the school "the benefit of due process." A May meeting

[26] Levy, H.O. Letter to P. Morrow, President, Board of Directors, Reach Charter School, including Attachment: to Reach Charter School, Notice of Revocation, June 28, 2002.

[27] Levy, H.O. "March 2002 Educational Evaluation and Corrective Action Plan." New York City Board of Education.

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between the BOE office of charter schools, the school's executive director, board of trustees, and attorneys resulted in the school preparing a third corrective action plan. This plan was found to offer insufficient answers to questions of school leadership, professional development, and educational oversight, and in July 2002 the school's charter was formally revoked for "failure to implement the educational program required by the charter and fiscal mismanagement."[28]

Although staff of the BOE's charter school office were clear that they would have preferred a high functioning charter school, they spoke with pride of the extended but firm process and its result. "This is good for the movement, when charters that don't work get closed." Yet it was also clear that closing the school had involved performance-based, regulatory and contractual accountability, as well as technical assistance, and had not been the open-or-shut case evoked by charter law.

"This is good for the movement, when charters that don't work get closed."

[28] Kadamus, J A. Memo to the Board of Regents: Proposed Revocation of Certificate of Incorporation of Reach Charter School. New York State Education Department, 3 July 2002.

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Performance-based accountability, the ideal of charter school reform, is generally supplemented by other accountability mechanisms.

RETHINKING THE ROLE OF CHARTER SCHOOL AUTHORIZERS

Studies of charter school authorizing agencies in different states have depicted evolving systems of oversight, in which authorizing staff are still learning. While minimizing the responsibilities of authorizers to ensure that charter schools uphold the public trust, these studies confirm our own finding that performance-based accountability, the ideal of charter school reform, is generally supplemented by other accountability mechanisms (Vergari, 2000; Hill, Lake, Celio, Campbell, Herdman, & Bulkley, 2001).

Several studies underscore the difficulties of implementing a strict performance-based system. For example, Hassel and Vergari (1999), who analyzed early charter school authorizers, argue that the task of holding schools accountable for results has been complicated by problems of establishing clear and appropriate achievement goals for each charter school; finding appropriate standardized tests for gauging the performance of each school being overseen; and deciding how much progress toward the goals is sufficient to continue the charter. Hill, Lake, Celio, Campbell, Herdman, & Bulkley (2001) view authorizers as struggling with three issues in the assessment of school performance: how to measure a school's contribution to learning; how to tell the difference between a school that is improving and one that is not; and whether to require that charter schools meet or exceed the levels of student achievement growth attained by conventional public schools serving similar students. Finally, Bulkley (2001) studied charter school accountability in the charter renewal (or revocation) process, when performance should be the only factor under consideration. She argues that, because of the difficulties involved in holding charter schools accountable for educational performance, and particularly the challenge of defining educational improvement, authorizers are working out such "middle grounds" strategies as using the application as a form of "input accountability," intervening directly or indirectly in charter schools' practice, and offering capacity-building/technical assistance when needed. She does not mention that, in giving this technical assistance, the authorizers are creating potential conflicts when they attempt to make a performance-based accountability decision at the conclusion of the renewal/revocation process.

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Several additional studies affirm that, in the face of the complexities of implementing performance-based assessment, authorizers are using other forms of accountability. A national study by SRI International (2000) concludes that, in addition to performance-based accountability, authorizers use the charter application form as an accountability mechanism to monitor their schools on a range of issues, from instructional practices and governance to staff and student turnover rates. Vergari (2000) finds that authorizers tend to favor "a negotiated compliance" approach to the oversight of their charter schools. Hill, Lake, Celio, Campbell, Herdman, & Bulkley (2001), who divide charter granting agencies into groups depending on their enthusiasm for charter reform, find that those authorizers that are reluctant to approve charters tend to conduct aggressive compliance-based oversight, while those that are willing to approve charters conduct balanced performance and compliance-oriented oversight.

Supporting our own experience, several studies also stress the importance of political climates to authorizers' processes and procedures (Bulkley, 1999; Vergari, 1999). Vergari (2001) argues that political exigencies have resulted in a continuum of accountability, with the extent to which charter schools are held accountable for performance varying across states, and even within a single state. In New York City, as we have suggested, charter school accountability is occurring within the larger context of a strong statewide performance-based accountability system. Nevertheless, the three New York City School Chancellors have each created distinctly different environments for charter schools.

Our analysis of the accountability activities of charter school authorizing agencies in New York State suggests that, while these agencies are supplementing performance-based accountability with other forms of accountability, they are not diluting the strength of performance-based accountability. Instead, contractual and regulatory accountability activities add to the oversight mechanisms used by these authorizers. Insofar as charter school renewal in New York will be based on performance, this use of multiple accountability mechanisms does not seem to represent a failure on the part of the authorizers, but rather a natural formation given the nature of charter legislation and the fragility of new schools.

Our analysis of the accountability activities of charter school authorizing agencies in New York State suggests that, while these agencies are supplementing performance-based accountability with other forms of accountability, they are not diluting the strength of performance-based accountability.

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It is important to decrease the regulatory and other constraints under which public charter schools operate. Nevertheless, some regulatory accountability is critical to ensure that charter schools are not discriminating in their admissions and employment practices; that they are protecting the rights of disabled students and English language learners; that they are maintaining healthy and safe educational environments; and that they are appropriately spending tax dollars.

While the research cited has pointed to compromises in performance-based accountability, we do not believe that pure performance-based accountability represents responsible policy in a public system serving public school students. That is, it is important to decrease the regulatory and other constraints under which public charter schools operate. Nevertheless, some regulatory accountability is critical to ensure that charter schools are not discriminating in their admissions and employment practices; that they are protecting the rights of disabled students and English language learners; that they are maintaining healthy and safe educational environments; and that they are appropriately spending tax dollars.

The three New York charter school agencies described in this report have worked both alone and together to develop performance-based, contractual and regulatory accountability procedures that: a) allow for, and may assist in, the development of successful charter schools; b) ensure that these schools are following the educational designs promised in their charters and are operating according to law, and; c) eliminate unsuccessful charter schools. Although these procedures differ from the do-or-die performance-based accountability of the charter school ideal, student performance appears to be the critical endpoint for all three authorizers.

Free-market advocates who believe in the capacity of consumer choice to create good schools might well fault New York's authorizers for excessive oversight, and too heavy a reliance on contractual and regulatory accountability. Certainly, all three authorizers have developed oversight systems that are both more comprehensive and more frequently applied than those used for traditional public schools. Moreover, as we have suggested, although the authorizers are carrying out the law, aspects of both their regulatory and contractual oversight activities may need fine-tuning. For example, while school charters have the legal status of contracts, it is still not clear which detailed promises made before a charter school opens give school staff the needed flexibility to solve the evolving challenges of developing a school. In fact, as prospective charter school founders become more professional in filling out the complex applications, and some EMOs produce boiler plate applications, charter school authorizers may have to rethink the application process, including the

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possibility of helping community-based groups with strong track records in running schools to obtain charters. Similarly, while some reporting requirements offer important ways to assess school progress for both charter schools and their authorizers, authorizers need to be wary both of the limits of reports as an accountability tool, and of the burden reporting places on schools, particularly those without private partners.

Nevertheless, as other researchers have noted in other states, New York State's three authorizers are all evolving their practices. While they have crafted a range of accountability tools that, in their view, offer the possibility of averting school failure and increase the likelihood of success, none of their processes appear fixed or final. Indeed, new problems experienced by charter schools regularly turn into new oversight mechanisms. This is an important advance on the educational landscape, a stark contrast with traditional top-down public school accountability systems that tend to have little capacity to respond to school-level problems and/or to make changes based on feedback from schools. While this flexibility may be due both to the newness of charter schools and to the relatively few schools over which the authorizers have oversight, the responsiveness, shared by all three New York authorizers, in different degrees, has been a particularly important and positive contribution of charter reform.

All three New York authorizers also agree in principle that a strong performance-based accountability system can be used to drive school improvement. Yet the premise that offering teachers data on how well their students do on standardized tests is enough to improve teaching and learning remains to be demonstrated. This is particularly the case since charter schools are generally new schools with inexperienced staff. Thus, charter school teachers may need assistance in both using data as an ongoing feedback system and in analyzing and improving their teaching practices.

Even were teachers and administrators in charter schools able to understand how to use their own student data most effectively, there is a further question of how the ability of charter schools to pay their teachers will affect staffing in the long run. Thus far, inexperience among staff has

been exacerbated by high staff turnover in some schools. Even when the energy and commitment of charter school teachers can ameliorate some capacity issues in the short run, school with high staff turnover cannot build the commitment and experience necessary to building successful learning communities. The failure of many New York City low-performing schools to improve student outcomes suggests that real capacity issues may hinder school growth when there is a brain drain to higher-performing schools and better paying districts.[28]

The intense oversight experienced by charter schools in New York raises a related question concerning the public administrative costs of charter school reform. Currently, approximately twenty-five individuals across three agencies administer and oversee forty-seven charter schools in New York State. (The number is significantly higher if one includes individuals from other offices at both the state and city education agencies who perform some oversight function.) This is clearly a much higher ratio of oversight administrators than exists for traditional public schools, which have been faulted for excessive central administration costs, often by those who favor charter schools and other forms of deregulation as a fiscal reform strategy. Insofar as charter schools continue to develop, these administrative costs will decrease per school; however, with a significant increase in charter schools, the current intensive oversight mechanisms of the three authorizers will likely become less labor intensive.

Finally, we return to the implicit criticism leveled at charter school authorizers by investigators who hope for the implementation of a pure form of performance-based accountability. While we agree that charter schools must be held to their accountability promises, we do not believe that public charter schools should be allowed to develop without oversight until their charter is over, and we doubt that the renewal decision can be made in a vacuum on the basis of the students' achievement on standardized tests alone.

With the passage of the No Child Left Behind (NCLB) Act of 2001, public schools in general are moving toward increasing performance-based

[28] Since SURR schools have often had difficulty raising student achievement sufficiently to get off the list, the existence of charter schools in these districts may one day provide an opportunity to compare them with the highly regulated SURR process. While the latter includes requirements for teacher certification, the length of the school year, the curriculum to be used, and even the schedule for the school day, the most important leverage for school improvement in charter schools may be the pressure of performance-based accountability embedded in the renewal decision.

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accountability. NCLB assumes that the combination of choice and a stronger system of performance-based accountability can be levers for school improvement, and offers children in failing schools the choice of public charter schools. From the policy perspective of NCLB, it is fortuitous that most New York City charters have been situated in communities with failing schools, offering families a very modest version of the choices promised by the act. But from the perspective of charter school authorizers, ensuring successful schools in communities where children have been poorly served by public schools represents a special challenge.

While traditional public schools will probably never be held to an accountability system that is based solely on performance, charter schools stand at the cutting edge of this shifting balance toward performance-based accountability. At the same time, they are an experiment in whether intense oversight, including high-stakes pressure on performance, can lead to better student outcomes.

While traditional public schools will probably never be held to an accountability system that is based solely on performance, charter schools stand at the cutting edge of this shifting balance toward performance-based accountability.

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